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June 21, 2006

VIA HAND DELIVERY

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: NSTAR Electric – Default Service Rates
Request for Disclosure of Information

Dear Secretary Cottrell:

We represent the Cape Light Compact, a municipal aggregator under G.L. c. 164, § 134, that consists of the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County, acting together as the Cape Light Compact (the "Compact"). The Compact is organized through a formal Inter-Governmental Agreement signed by all of the towns, as well as Barnstable and Dukes counties, pursuant to G.L. c. 40, § 4A.

We are writing to request that the Department of Telecommunications and Energy (the "Department") (1) deny protective treatment for information regarding the proposed charges for "uplift costs" included in the default service rates approved by the Department on June 1, 2006, (2) disclose such information to the public and (3) disclose to the public any information collected or analyses performed by the Department to satisfy itself that the estimated uplift costs included in the default service rates are in fact reasonable.

Current Department policy already threatens retail competition because it allows distribution companies to subsidize default service rates by charging distribution customers for unrecovered default service costs. This threat will reach a new order of magnitude if the Department refuses to allow competitive market players to discover whether and to what extent such subsidization is likely to occur with respect to uplift costs.

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BACKGROUND

Default Service RFP. On April 19, 2006, Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company (collectively, "NSTAR") issued a Request for Proposals for Power Supply for Default Service for the Delivery Term Commencing July 1, 2006 (available at http://www.nstaronline.com/your_business/supply-wholesale.asp) (the "RFP"). The RFP requested bidding suppliers to make separate proposals (1) "with the Suppliers taking responsibility for the delivery of [Locational Installed Capacity ("LICAP")] and [Locational Forward Reserves ("LFR")] as and to the extent approved by the FERC and allocated to Default Service load under [Standard Market Design]" and (2) "with [NSTAR] taking responsibility for the delivery of such LICAP & LFR." RFP § VII. While the RFP did not refer specifically to "Reliability-Must-Run" charges or generally to "uplift" charges, NSTAR and the bidders apparently interpreted section VII of the RFP to request bids with and without the suppliers' taking responsibility for uplift costs imposed by ISO New England. Pursuant to the RFP, initial proposals were due at 4 p.m. on May 15, 2006, with final bids due at 11 a.m. on May 16, 2006. RFP § XII.A.

ISO New England Uplift Charges for the SEMA Zone. On May 15, 2006, ISO New England issued a memorandum to NEPOOL market participants notifying market participants of the ISO's decision to designate generation from the Canal power plant as necessary for "second contingency protection" in the Southeast Massachusetts ("SEMA") Zone. Memorandum, dated May 15, 2006 from Kevin A. Kirby, ISO New England to Market Participants at 1 (attached hereto as Attachment 1) (the "Kirby Memorandum"). The impact of this decision is that, when the ISO orders the Canal plant to generate when it would not otherwise do so for economic reasons, Canal's "out-of-merit" costs are allocated as "uplift charges" to all load serving entities providing power to end-use customers in the SEMA Zone. Id. The uplift charges imposed to date on LSEs serving customers in the SEMA Zone have been very significant and show no signs of abating. See, e.g., National Grid Fixed Basic Service Rates for Medium & Large General Service (available at http://www.nationalgridus.com/masselectric/business/rates/5_fixed.asp) (disclosing separate rates for medium and large commercial and industrial customers in the SEMA and NEMA Zones for the quarter beginning August 1, 2006 that suggest an implied uplift cost adder of $12.22/MWh for customers in the SEMA Zone);[1] Letter dated June 12, 2006, from SUEZ Energy Resources to the Department at 2 (calculating

[1] In all prior default service supply quarters reported on National Grid's website (5/1/03 through 7/31/06), default service rates for medium and large C&I customers in the SEMA Zone have been from roughly $2/MWh to roughly $10/MWh *less* than comparable rates for customers in the NEMA Zone, with an average "baseline" difference of $5.82/MWh over the period from 8/1/05 through 7/31/06. See id. The rates proposed by National Grid companies for the 8/1/06 through 10/31/06 period entirely erase this difference and would have the SEMA rates actually exceed the NEMA rates by $6.40/MWh, see id., resulting in a total implied uplift cost adder of $12.22/MWh ($5.82 + $6.40).

that the average real time uplift charges in the SEMA Zone in the last two weeks of April 2006 was $9.15/MWh) (attached hereto as Attachment 2). NSTAR serves as an LSE with respect to power provided to its default service customers and therefore NSTAR is responsible for its share of ISO uplift costs. It is not clear whether the bidders responding to NSTAR's RFP had time to receive and analyze the May 15 communication from ISO New England before submitting their final bids.

Filing of Proposed Default Service Tariffs with Estimate of Uplift Charges. On May 23, 2006, after the conclusion of the RFP process and negotiation of power supply terms with the winning bidder(s), NSTAR made a filing (the "Tariff Filing") requesting that the Department approve NSTAR's proposed default service tariffs. The Tariff Filing included an Appendix B [CONFIDENTIAL] that contains "[a]n explanation of the calculation of the Default Service prices," including "specific contract and pricing terms." Tariff Filing at 3. NSTAR noted that it had shown an estimate of uplift costs in Appendix B, Schedule A CONFIDENTIAL. Id. at n.4. Further, NSTAR counsel confirmed orally to Compact counsel that the proposed adder for estimated uplift costs (the "Uplift Adder") is shown on Schedule A separately from the proposed charges for wholesale power supply and that the Uplift Adder was derived by calculating the difference between bids with supplier responsibility for uplift costs and bids without supplier responsibility for uplift costs. The Tariff Filing does not publicly disclose the Uplift Adder.

Default Service Rates and the Default Service Adjustment Mechanism. Under the current regime established by the Department in D.T.E. 99-60-C (Oct. 6, 2000), if a distribution company's default service revenues for a calendar year fall short of that company's default service costs for that year, the distribution company may collect the amount of the under-recovery through a "default service adjustment factor" that is added in the following calendar year to the bills of *all ratepayers* (not just default service customers). Accordingly, if a distribution company's default service rates do not include all costs of providing default service, the distribution company will be able to offer default service at below-market costs, with the costs of default service subsidized retroactively by all ratepayers. Counsel to NSTAR confirmed to Compact counsel that, in the event that actual uplift costs for the July 1, 2006 to December 31, 2006 period exceed the undisclosed estimate of uplift costs included in the default service rates, NSTAR would seek to recover the difference from all ratepayers in 2007 through use of the default service adjustment mechanism.

Concerns Raised by Market Participants. On May 25, 2006, the Compact filed a letter urging the Department to postpone action on NSTAR's filing until the Compact could receive satisfactory assurances that the proposed default service tariffs include all costs that are being imposed by ISO New England on load serving entities. Informally,

the Compact sought directly from NSTAR the per MWh amount of the Uplift Adder included in the default service tariffs, and offered to execute a confidentiality agreement to protect the information from disclosure. NSTAR has refused to disclose this information voluntarily.

In a response filed with the Department on May 26, 2006, NSTAR merely reiterated that "[e]stimates [of uplift costs], based on the bids received by wholesale suppliers for theses costs, are included in the proposed Basic Service rates for customers in the SEMA Load Zone, and are reflected in the Companies' filing as an adder to the retail rates for this load zone (see Appendix B, Schedule A CONFIDENTIAL)." Letter dated May 26, 2006, from NSTAR to the Department at 1. NSTAR's response does not disclose the Uplift Adder, nor does it indicate whether bidders' implied estimates of uplift costs were grounded in adequate information and analysis.

On May 31, 2006, the Retail Energy Supply Association ("RESA") also filed a letter urging the Department to postpone action on the Tariff Filing pending further investigation regarding the amount of the estimated uplift costs, the methodology used to estimate uplift costs and details concerning the methodology and timing for reconciliation and collection of under-recovery of uplift costs in default service rates. Letter dated May 31, 2006, from RESA to the Department at 1-2. RESA cautioned that "[a] failure to address these critical issues immediately will devastate the competitive market in the SEMA region, as efforts to develop competitive offers for customers in the face of this very substantial unknown will result in nothing but customer confusion and unwillingness to entertain offers that will necessarily be higher than basic service." Id. at 2.

On May 31, 2006, NSTAR responded to the RESA letter. NSTAR reiterated its position that the estimates of uplift costs were based on supplier bids but NSTAR also submitted to the Department "supporting schedules that provides [sic] further detail of the Companies' calculations." Letter dated May 31, 2006, from NSTAR to the Department at 2 (the "May 31 Letter"). NSTAR submitted these supporting schedules subject to a request for protective treatment and the supporting schedules have not been publicly disclosed. Id.

Department Order. On June 1, 2006, in an attempt to meet its accelerated schedule for approval of proposed default service tariffs, the Department issued an order approving the tariffs proposed in the Tariff Filing. With respect to the uplift cost issues, the Department stated that:

> [b]ased on our review of the NSTAR Electric filing, the Department finds that all reasonably known costs that are

> being imposed by ISO-NE have been included in the Companies' proposed basic/default service rates. . . . The Companies included in their proposed retail prices a proxy to account for projected uplift costs based on the bids received (NSTAR Filing at Appendix B, Schedule A (confidential)). We conclude that the method used by the Companies to estimate uplift costs is reasonable in light of the uncertainty that currently exists regarding these costs. Further, the Department finds that the resulting proxy is a reasonable estimate of the uplift costs NSTAR Electric expects to incur for its basic/default service load.

Order at 2-3. The Order does not disclose the Uplift Adder, nor does the Order indicate whether the Department determined that the bidders indeed had adequate information and conducted appropriate analysis to estimate uplift costs, whether the Department prepared its own independent projection of uplift costs, or how the Department otherwise determined that NSTAR's estimate is in fact a "reasonable estimate."

Motion for Protective Treatment of Confidential Information. NSTAR has adamantly opposed disclosure of the Uplift Adder. Concurrent with the Tariff Filing, NSTAR filed a Motion for Protective Treatment of Confidential Information (the "Motion"). In its Motion, NSTAR requested that "certain information contained in Appendix B to the May 23, 2006 Default Service filing be protected from public disclosure." The Appendix B information for which NSTAR seeks confidential treatment includes (1) "market prices," (2) "specific contract and pricing terms," (3) "cost and performance information," and, more generally, (4) "all bid information." Motion at 2-3. In addition, NSTAR submitted its supporting schedules on May 31 "subject to the [Motion]." May 23 Letter at 2. In support of the Motion, NSTAR submitted an affidavit of James G. Daly (the "Daly Affidavit"). The Department has not yet ruled on the Motion and should deny the Motion in part for the reasons set forth below.

ARGUMENT

I. LEGAL STANDARD

Information submitted to the Department may not be protected from public disclosure except in narrow circumstances where the party seeking such protection meets a heavy burden. G.L. c. 25, § 5D states in relevant part:

> The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other

> proprietary information, provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

As the Department has observed:

> G.L. c. 25, § 5D permits the Department, in certain narrowly defined circumstances, to grant exemptions from the general statutory mandate that all documents and data received by an agency of the Commonwealth are to be viewed as public records and, therefore, are to be made available for public review. See G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth. Specifically, G.L. c. 25, §5D, is an exemption recognized by G.L. c. 7, c.4, clause twenty-sixth (a) ("specifically or by necessary implication exempted from disclosure by statute").

Boston Edison Company, D.T.E. 99-16 (1999) ("BECO"). In weighing motions for protective treatment, the Department applies a three-part test derived from Chapter 25:

> G.L. c. 25, § 5D establishes a three-part standard for determining whether, and to what extent, information filed by a party in the course of a Department proceeding may be protected from public disclosure. First, the information for which protection is sought must constitute "trade secrets, [or] confidential, competitively sensitive or other proprietary information;" second, the party seeking protection must overcome the G.L. c. 66, § 10, statutory presumption that all such information is public information by "proving" the need for its non-disclosure; and third, even where a party proves such need, the Department may protect only so much of that information as is necessary to meet the established need and may limit [the] term or length of time such protection will be in effect. G.L. c. 25, § 5D.

Id.

With respect to the balancing of interests to be performed in weighing the need for disclosure, the Department has stated that "[i]n determining the existence and extent of such need, the Department must consider the presumption in favor of disclosure and the specific reasons why disclosure of the disputed information benefits the public interest." Hearing Officer's Ruling on the Motion of Boston Gas Company for Confidentiality, D.P.U. 96-50 at 4 (1996) (citing The Berkshire Gas Company, et al., D.P.U. 93-187/188/189/190 at 16 (1994)). At the same time, the weight of the public interest need not be "compelling" in order to justify disclosure. Verizon New England, D.T.E. 01-31-Phase I at 4 (Aug. 29, 2001).

The Department has been willing in certain circumstances to afford protective treatment to "price terms," provided that "the proponent carries its burden of proof by indicating the manner in which the price term is competitively sensitive." Standard of Review for Electric Contracts, D.P.U. 96-39 (Letter order Aug. 30, 1996) ("Standard of Review"). The Department has generally not been willing to afford protective treatment to non-price information. See, e.g., BECO (citing cases); Western Massachusetts Electric Company, D.T.E. 99-101 (Oct. 30, 2000) (same); Boston Edison Company: Private Fuel Storage Limited Liability Corporation, D.P.U. 96-113 at 4 (Hearing Officer Ruling Mar. 18, 1997) (exemption denied with respect to terms and conditions of requesting party's limited liability company agreement, notwithstanding requesting party's assertion that such terms were competitively sensitive); Standard of Review, D.P.U. 96-39 at 2 (noting that Department will grant exemption for electricity contract prices but "[p]roponents will face a more difficult task of overcoming the statutory presumption against the disclosure of other [contract] terms"); Colonial Gas Company, D.P.U. 96-18 at 4 (1996) (denying all requests for exemption of terms and conditions of gas supply contracts from public disclosure except for those terms pertaining to pricing).

As explained below, the Department should deny protective treatment with respect to NSTAR's estimate of uplift costs because NSTAR has not met its burden with respect to the protection of that information.

II. NSTAR HAS FAILED TO ESTABLISH THAT THE UPLIFT ADDER AND RELATED INFORMATION MERIT PROTECTIVE TREATMENT

The Uplift Adder and any supporting information merit disclosure because the information is not proprietary, the public interest in disclosure far outweighs any interest in protection and narrow disclosure of this particular information does not require disclosure of sensitive price data.

A. The Uplift Adder Is Not Proprietary Information

NSTAR has not met its burden of showing that the Uplift Adder and any supporting information (that does not contain sensitive supplier price data) consists of "trade secrets, [or] confidential, competitively sensitive or other proprietary information." G.L. c. 25, § 5D. While the Daly Affidavit generally alleges that "cost and procurement information in Appendix B contains confidential, competitively sensitive and proprietary information," Daly Aff. ¶ 6, the affidavit does not explicitly claim that the estimate of uplift costs represents proprietary information. Indeed, assuming that the Uplift Adder represents the *difference* between one or more bids that included uplift costs and one or more bids that excluded uplift costs, the difference itself is not a "market price" but rather a relationship calculated by NSTAR that does not reveal – and cannot be used to reveal – any particular bid price. Moreover, NSTAR's estimate of uplift costs ultimately does not reflect the "market price" of any good or service provided by a wholesale supplier but rather a *cost* that NSTAR will incur as an LSE and that bears no relation to the contracted price of power.

B. NSTAR Has Not Established the Need for Protection of the Uplift Adder

NSTAR has failed to overcome the statutory presumption that the Uplift Adder and related supporting information is public information. It is understandable that bid prices themselves should be "protected from public disclosure to protect [NSTAR's] future negotiating position when seeking to procure Default Service for its customers." Daly Aff. ¶ 7. That logic, however, does not apply to the Uplift Adder and related information regarding estimates of uplift costs. NSTAR has already disclosed publicly that its default service supply contracts ultimately allocate all liability for uplift costs to NSTAR, Tariff Filing at 3 n.4.[2] Further disclosure of the estimated amount of those costs could not have any effect on NSTAR's ability to attract competitive bids for wholesale power supply in the future, nor are any such allegations contained in the Daly Affidavit.[3]

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[2] The uplift costs are initially the responsibility of NSTAR as an LSE and are ultimately the responsibility of NSTAR under its wholesale supply contracts. Id. For unspecified reasons, NSTAR alleges that it "accepted bids . . . which include costs associated with uplift charges" but simultaneously agreed to "reimburse the relevant supplier for uplift charges." Id.

[3] NSTAR's allegation that the RFP offered confidentiality to bidders, Daly Aff. ¶ 8, is verifiably true, RFP § XII.C., but cannot justify shrouding the uplift cost estimate in secrecy in the face of the heavy statutory presumption favoring disclosure. Moreover, the confidentiality provisions of the RFP and the form of default service power supply agreement attached as Exhibit A to the RFP each contain exceptions expressly allowing disclosure of confidential information if required by law, regulation or order. RFP § XII.C.; Master Power Supply Agreement, Art. 21 (Ex. A to RFP) (available at http://www.nstaronline.com/your_business/supply-wholesale.asp).

In contrast, the public interest in disclosure of the Uplift Adder and related supporting information is overwhelming. NSTAR has chosen both to retain ultimate liability for uplift costs and to rely on the default service adjustment mechanism as a means of hedging the risk that actual uplift costs will exceed NSTAR's estimate. In doing so, NSTAR has transferred this risk to all of its ratepayers. If NSTAR is permitted to engage in such risk-transfer maneuvers, the public interest demands disclosure of the estimated uplift costs so that the nature of that risk can be fairly understood.

Further, in mitigating the risk to ratepayers of under-estimation of actual uplift costs, NSTAR has voluntarily chosen to rely on estimates of uplift costs derived from supplier bids. Such reliance is suspect because, among other things, the public has no assurance that the supplier bids incorporating uplift costs were based on accurate market information (*e.g.*, the Kirby Memorandum had only been issued the day before final bids were due) and the record suggests that even those bids did not truly place all risk on the supplier.[4] Moreover, given NSTAR's understanding of the local transmission and generation systems and NSTAR's central role in the ISO's actions to flag the Canal plant as a "Special Constraint Resource" and subsequently redesignate the Canal plant as necessary for "second contingency protection," see Kirby Memorandum at 1-2, together with NSTAR's ongoing communications with the ISO regarding transmission upgrades and special operations procedures that might "mitigate or eliminate the need for local must run generation," id. at 4, NSTAR was equally, if not better, positioned to produce its own estimate of uplift costs. NSTAR's choice to rely on estimates of uplift costs derived from supplier bids should not allow the company to hide those estimates behind a veil of secrecy.

In addition, it is critical that stakeholders in the competitive market, including the Compact, competitive suppliers, ISO New England and others, know to what extent NSTAR's default service rates include estimated uplift costs. If NSTAR has underestimated those costs – and recovers the difference through the default service adjustment mechanism – the Compact and competitive suppliers must compete against an unfairly subsidized retail rate, consumers will receive improper price signals and consumers receiving competitive supply through the Compact and otherwise will not only have to pay for the full amount of uplift costs allocated to their retail load but also for the portion of the uplift costs allocated to all distribution customers arising from power consumed by default service customers. It is already a significant threat to competitive markets that a distribution company, through design or inadvertence, can subsidize default service costs through use of the default service adjustment mechanism. If, on top of that, the Department refuses even to allow competitive market players to

[4] Indeed, NSTAR itself stated that it "accepted bids . . . which include costs associated with uplift charges" but those bids cannot have allocated all risk to the suppliers because NSTAR agreed to "reimburse" the suppliers for those very charges. Tariff Filing at 3 n.4.

discover whether and to what extent such subsidization is likely to occur, this threat will loom even larger.

It is not satisfactory for the Department simply to reassure market participants that, in the Department's view, NSTAR's undisclosed Uplift Adder is a reasonable proxy. A conclusory finding of this sort, without adequate subsidiary findings or rationale, is incapable of verification and, as a result, cannot mitigate the serious risks that market participants face if they choose to continue to be active in the Massachusetts market. In short, disclosure of the Uplift Adder and related supporting information is imperative for the health of the competitive marketplace and to preserve fairness for all Massachusetts consumers. Any interest in protection of the information must give way to the stronger public interest in disclosure.

C. Even If NSTAR Has Established a Need to Protect Some of the Appendix B Information, NSTAR Has Not Shown That Protection of All of That Information Is Necessary

Assuming for argument's sake that NSTAR has proven the need to protect some of the information contained in Appendix B of the Tariff Filing, the Department still has a statutory duty to protect "only so much of that information as is necessary to meet the established need." G.L. c. 25, § 5D. Accordingly, even if NSTAR has established a need to protect wholesale price information in Appendix B, Chapter 25 requires that the Department determine which elements of Appendix B require protection and which do not. Those elements of Appendix B (and the supporting schedules filed with the May 23 Letter) that do not require protection must be disclosed. For all the reasons outlined above, NSTAR has not established a significant need to protect the Uplift Adder and related information contained in Appendix B (and the supporting schedules).

As NSTAR has failed to meet its burden under G.L. c. 25, § 5D with respect to its estimate of uplift costs and the resulting Uplift Adder, the Department should deny protective treatment for, and disclose, that information.

III. THE DEPARTMENT SHOULD ALSO DISCLOSE ANY INFORMATION GENERATED BY THE DEPARTMENT TO ANALYZE THE REASONABLENESS OF NSTAR'S UPLIFT COST ESTIMATE

In its Order, the Department finds that the Uplift Adder used by NSTAR represents "a reasonable estimate of the uplift costs [NSTAR] expects to incur for its basic/default service load." Order at 3. This finding suggests that the Department may have independently collected and/or analyzed information to satisfy itself that NSTAR's estimate of uplift costs and resulting Uplift Adder were reasonable. If that is indeed the

case, we commend the Department for its vigilance and respectfully request that the Department publicly disclose any information it collected and any analysis it performed along these lines. (If the Department has not reduced such information or analysis to written form, we would respectfully request that the Department do so and then disclose the information and analyses.)

RELIEF REQUESTED

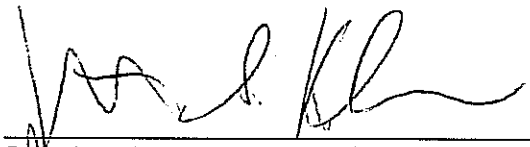
For all the above reasons, the Compact respectfully requests that the Department: (1) deny protective treatment to, and publicly disclose (or, in the alternative, order that NSTAR disclose to the Compact subject to a confidentiality agreement), (A) the Uplift Adder(s) and any portion of Appendix B of the Tariff Filing (including, without limitation, Schedule A and the supporting schedules filed with the May 23 Letter) containing information regarding the estimate of uplift costs included in the default service rates proposed in the Tariff Filing and (B) any other portion of Appendix B (including, without limitation, Schedule A and the supporting schedules filed with the May 23 Letter) with respect to which NSTAR has not met its burden under G.L. c. 25, § 5D; and (2) publicly disclose any information the Department collected and any analysis it performed to satisfy itself that NSTAR's estimate of uplift costs was reasonable.

Thank you for your attention to this matter.

Sincerely,

THE CAPE LIGHT COMPACT

By its attorneys,



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Attachment 1

ISO new england

Date: May 15, 2006

To: Market Participants

From: Kevin A. Kirby

Subject: Operations of the Lower Southeast Massachusetts Area

Purpose

To describe the operational decisions for dispatching the Canal generation for second contingency protection and the determination of the appropriate flag to be applied for the settlement of out-of-merit costs.

Background

In December 2003, the Cape Cod area experienced a total power outage following loss of the 345 kV transmission supply and Canal generation. In response to this event, ISO-NE developed a Cape Cod Area Operating Guide that was agreed to with NSTAR. This guide addresses operational needs during generation and/or transmission equipment outages. In addition, the guide identifies the load level at which local generation is needed for controlling high voltage during light loads. The guide does not specifically address the local generation requirements of the Canal units during normal operations (all lines in service). At the time the guide was developed, sufficient local generation from the Canal station was normally available and generally operating in merit. This local generation in combination with both lines in service provided adequate means to meet criteria for both first and second contingencies. In general, second contingency protection is provided for areas of New England where contingencies can lead to instability, uncontrolled separation, or cascading outages that impact Areas outside of New England. Second contingency coverage is also provided where ISO operators would not be able to safely restore an area to meet reliability criteria within 30 minutes following a first contingency event.

At the end of January 2006, ISO Operations determined that a Canal unit was no longer needed online for voltage control per the Cape Cod Area Operating Guide or for first contingency protection and therefore would not be dispatched for area protection. NSTAR then requested that a Canal unit continue to be dispatched for area protection. The ISO flagged Canal as a Special Constraint Resource ("SCR") pursuant to the market rules. ISO-NE notified NSTAR that the unit was being flagged as SCR and subsequently met with NSTAR to discuss the area operations and their reliability concerns. Based on information received through those discussions the ISO conducted further analysis.

Further ISO analysis indicated that without the Canal generation, NERC, NPCC and ISO reliability criteria standards would not be met without pre-second contingency load shedding. The potential failure to comply with these reliability criteria would result from the inability to re-dispatch the system within 30 minutes. NERC, NPCC and ISO reliability criteria allow load shedding as an acceptable operator response provided the operators have the time to respond. ISO had the understanding that this action could be implemented as a second contingency response for the SEMA area. However, the studies indicate that the thermal overloads are too severe for the operators to respond within an acceptable time frame. These severe thermal overloads are what actually took place in December 2003 when the area experienced the power outage.

Lower Southeast Massachusetts Operations

The New England Bulk Power System is operated in accordance with ISO New England Operating Procedure No. 19, Transmission Operations. This procedure is designed to comply with the NERC Standards and NPCC Criteria. Section II, Reliability Criteria for Transmission Operations, defines the timeframes that transmission elements can be loaded based on emergency ratings and the timeframe to re-dispatch the system to withstand the next contingency. Consistent with NERC and NPCC criteria, following a contingency the system must be re-dispatched within 30 minutes to withstand another contingency.

This area is supplied by two 345 kV paths and two 115 kV transmission paths:

- West Walpole – Carver – Canal (331/322) lines)
- Auburn – Jordan Road/Pilgrim – Canal (342 line)
- Auburn – Kingston – Brook St. – Carver – Semass – Tremont (191-117-116-127-128 lines)
- Bell Rock – High Hill – Industrial Park – Tremont (D21-111-112 lines)

There are four 345/115 kV autotransformers supplying the 115 kV system internal to this area, one at Carver and three at Canal. The local 345 kV transmission system design results in the loss of the transmission supply to all four autotransformers when both the 331 and 342 transmission lines are out of service. System Operators must be able to re-dispatch the system within 30 minutes following a first contingency loss of either the 331 or 342 lines to withstand loss of the other line.

Without local generation on line, the thermal overloads in the lower Southeast Massachusetts area would exceed the acceptable emergency loading as defined in OP 19 on both remaining 115 kV transmission paths following the second contingency. The overloads begin to exceed the Short Term Emergency, STE, rating of the 115 kV transmission paths for New England loads as low as 10,000 MW. The calculated overloads are so severe that time does not allow the System Operators to rely on load shedding by the local transmission company as an action for second contingency

coverage as allowed by operating criteria. As a result of the transmission limitations, the ISO determined that the Canal generation must be run to enable the ISO to re-dispatch the system within 30 minutes following a contingency to comply with NERC, NPCC and ISO reliability criteria.

The studies also concluded that the operating guide should be updated with respect to controlling high voltage during light-load conditions. The high voltage control problem is a function of the setting of the Canal autotransformer no-load tap position. NSTAR informed the ISO that they now adjust the tap changer seasonally for the winter and summer periods. The seasonal change to the tap position provides an additional voltage boost on the 115 kV system supplying the Cape Cod area during the summer peak load season and mitigates the high voltage problem during the Winter period.

Flagging of Units for Reliability

- The thermal overloads are driven by the simultaneous loss of the four autotransformers at the Canal and Carver substations following a second contingency event.

- Market Rule 1 Section III.6.2.1 requires the ISO, at the request of a Transmission Owner or Distribution Company to commit and dispatch generating Resources to provide relief for constraints and to record those in the log as a Special Constraint Resource. Any Net Commitment Period Compensation ("NCPC") is charged in accordance with the provisions of schedule 19 of Section II of the Transmission, Markets, and Services Tariff. Schedule 19 requires that "in the event a SCR is requested by a Transmission Owner or distribution company and the ISO also requires that unit to be on-line in accordance with the ISO's system and procedures, the ISO will apply the appropriate flag to reflect the ISO's need for the unit and will only flag the unit as SCR when the ISO does not require the Resource (or when changed dispatch of the unit is requested by the Market Participant)." Based on the aforementioned analysis, the local generation requirements are for local second contingency protection and will be flagged accordingly. The hours of operation initially flagged as SCR will be changed pursuant to Schedule 19.

Action Plan to Mitigate Reliability Costs in SEMA

The ISO has scheduled meetings with NSTAR to identify and pursue potential transmission upgrades or special operational procedures on their system to mitigate or eliminate the need for local must run generation.

SUEZ
Energy Resources NA

June 12, 2006

Judith F. Judson, Chair
Massachusetts Department of Telecommunications
and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: ISO New England Southeast Massachusetts Area (SEMA) Reliability Must Run (RMR) designation of Canal Generation

Dear Chair Judson:

SUEZ Energy Resources NA, Inc. (Suez) is writing to encourage the Massachusetts Department of Telecommunications and Energy (Department) to sponsor discussions to supplement the outreach effort being convened by ISO New England regarding the dispatch of Canal generation for second contingency protection. Suez is the fourth largest retail commercial and industrial electricity provider in the United Sates with approximately 750 commercial, industrial and institutional customers with 12,000 accounts representing over $2 billion in contract value and 625MW of load. Suez is active in nine markets including Massachusetts delivering risk managed retail commodity electricity products and load management services. Suez has regional offices in Boston, Houston, Dallas, and New Jersey. Suez is the retail energy unit of SUEZ Energy North America (SENA). SENA's national portfolio includes operation of LNG vaporization terminals in the U.S. including the Everett, Massachusetts Terminal which supplies 20% of New England's natural gas demand and a 1,550 MW power plant generating electricity for approximately 1.5 million homes in Greater Boston; ownership of 5,460 MW of electricity generation with 326 MW in Massachusetts; development of low cost Independent Power Producers with four merchant power plants in operation, and one more in construction; and management of commodity price risks through its Real-Time 24-hour desk trading in excess of 40,000 GWh of annual power sales.

Suez believes that the ramifications of ISO New England's operational decision reach beyond the thematic scope of an independent system operator and deserve the attention and careful thought of the Department. Suez supports a broad and inclusive dialogue on a subject that is already having great impacts on the competitively supplied customers and suppliers of electricity in Massachusetts. Similar to the recent efforts in New England in which the Department involved itself in capacity market design matters that were not directly or technically before it, the balanced policy input of the Department

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on this ISO New England matter could provide the appropriate voice of concern for electricity consumers and suppliers in Massachusetts.

In comparison to the potential financial impacts of the proposed Locational Installed Capacity market and the Forward Capacity Market, SEMA RMR charges are much larger. Until April 15, 2006, RMR charges never existed in SEMA with any significant financial impact. From April 15 – 30, 2006, based on public information provided by ISO New England, Suez calculates that the average real time RMR charge was $9.15/MWh. That is just one component of ancillary services. For all electricity load served in the SEMA, the real time RMR charge amounted to approximately $5.2 million for the operation of Canal generation for two weeks. Load Serving Entities await the May invoices and have no indication that these SEMA RMR charges will abate in the future. Furthermore, ISO New England has informed market participants that it intends to resettle January 2006, February 2006, March 2006, and the first two weeks of April to include SEMA RMR charges for load serving entities. The magnitude of the financial impact will be passed through to consumers when contractually possible or born by suppliers – leading some to consider exiting the market.

Suez is reaching out to the Department because it believes that a failure to address these critical issues will have detrimental effects on the competitive retail electricity market in Massachusetts. ISO New England made a presentation and held a brief discussion at the June 2, 2006 Participants Committee meeting to ostensibly begin the process of hearing market participant concerns. However, after hearing from concerned market participants for only a short time, ISO New England staff just responded that it intended to maintain its position. The ISO did not convey a willingness to address market participant concerns in a substantive way. Some time also was allocated at the June 7, 2006 Reliability Committee meeting for special discussions of the proposed SEMA charges and potential alternatives. A June 8, 2006 teleconference between ISO New England counsel and lawyers for some market participants was convened. There, the ISO reiterated its belief that its actions were proper under the tariff and indicated that it did not understand how its actions would make a difference to the market. Market participants continue to fear that their efforts at inclusive and transparent dialogue on this matter will again be met with indifference by ISO New England.

Suez believes that the careful and deliberate work of the Department in creating and fostering a sustainable competitive retail electricity market is at risk as key market elements are being deliberated without your sound input or guidance. Besides no notification or solicitation of public input, one of the contentious issues is that ISO New England is deliberating on how to allocate costs between the delivery component and commodity charge – clearly a subject on which the Department should comment. In fact, by designating Canal Generation as RMR instead of Special Constraint Resource, and by running it out-of-merit, ISO New England has already determined how to allocate costs by shifting millions of dollars in usage charges in the SEMA from delivery to commodity

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charges -- thereby relieving NSTAR of these costs and shifting them to all load serving entities instead.

The Department should take into consideration these factors in its own decision-making process regarding basic service tariffs. ISO New England's SEMA RMR decision will dramatically increase the cost of providing basic service. Suez's vision for competitive market design includes market-reflective basic service rates. Suez is concerned that any deviation from basic service rates that reflect the full costs of providing that service could exacerbate the impacts of ISO New England's decision by making the market-reflective rates charged by competitive suppliers appear excessive in comparison.

Suez welcomes the opportunity to meet with the Department Commissioners and staff to discuss this matter. Suez encourages the Department to include ISO New England market participant or interested parties. Please find attached for your information a copy of a letter sent by Suez to the ISO New England on the same matter. Thank you for your consideration and I look forward to discussing this further.

Sincerely,

Michel Sirat
President and CEO
SUEZ Energy Resources NA, Inc.

Attachment

cc: Commissioner James Connelly
Commissioner W. Robert Keating
Commissioner Brian Paul Golden
ISO New England Market Participants (by e-mail)

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